Supreme Court, U.S.
FILED
SEP 12 1986
JOSEPH F. SPANIOL, JR.
CLERK

86-411

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

GEORGE J. OTLOWSKI, Mayor of Perth Amboy; PAUL ZITO, ARMAND R. CANNAMELA and ANGEL QUINONES, individually and as members of the City Council; JAMES GOUMAS, Tax Assessor of the City of Perth Amboy, and C. MARION LIPIRA, Tax Collector of the City of Perth Amboy,

Petitioners,

vs.

THOMAS H. KEAN, Governor of the State of New Jersey; MICHAEL M. HORN, Treasurer of the State of New Jersey; JOHN R. BALDWIN, Director of the Division of Taxation of the State of New Jersey and the DIVISION OF TAXATION OF THE STATE OF NEW JERSEY: IRWIN I. KIMMELMAN, Attorney General of the State of New Jersey; CARMEN A. ORECHIO, President of the New Jersey Senate; and the NEW JERSEY SENATE: ALAN J. KARCHER, Speaker of the General Assembly of the State of New Jersey; and the GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY: THE MIDDLESEX COUNTY BOARD OF TAXATION, a body politic of the State of New Jersey; BARBARA GALLAGHER, President of the Middlesex County Board of Taxation; FRANKLIN F. MURPHY, Member of the Middlesex County Board of Taxation; ANGELA J. SZYMANSKI, County Tax Administrator of the Middlesex County Board of Taxation; all in their official and individual capacities,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

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QUESTIONS PRESENTED FOR REVIEW

1. Is New Jersey's Local Property Tax Law unreasonable, arbitrary and capricious thereby violating the Due Process rights of Petitioners.

2. Is New Jersey Local Property Tax Law unreasonable, arbitrary and capricious thereby violating the Equal Protection Right of Petitioners.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

GEORGE J. OTLOWSKI, Mayor of Perth Amboy; PAUL ZITO, ARMAND R. CANNAMELA and ANGEL QUINONES, individually and as members of the City Council; JAMES GOUMAS, Tax Assessor of the City of Perth Amboy, and C. MARION LIPIRA, Tax Collector of the City of Perth Amboy,

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vs.

THOMAS H. KEAN Governor of the State of New Jersey; MICHAEL M. HORN, Treasurer of the State of New Jersey; JOHN R. BALDWIN, Director of the Division of Taxation of the State of New Jersey and the DIVISION OF TAXATION OF THE STATE OF NEW JERSEY: IRWIN I. KIMMELMAN, Attorney General of the State of New Jersey; CARMEN A. ORECHIO, President of the New Jersey Senate; and the NEW JERSEY SENATE; ALAN J. KARCHER, Speaker of the General Assembly of the State of New Jersey; and the GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY: THE MIDDLESEX COUNTY BOARD OF TAXATION, a body politic of the State of New Jersey; BARBARA GALLAGHER, President of the Middlesex County Board of Taxation; FRANKLIN F. MURPHY, Member of the Middlesex County Board of Taxation; ANGELA J. SZYMANSKI, County Tax Administrator of the Middlesex County Board of Taxation; all in their official and individual capacities.

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

Petitioners pray that a Writ of Certiorari issue to review the Order of the Supreme Court of New Jersey (App. B) denying review of the opinion of the Appellate Division of the Superior Court of New Jersey (App. A) which affirmed the Order and Opinion entered by Judge Michael Andrew, Jr. in the Superior Court, Law Division, State of New Jersey. (App. C)

OPINIONS BELOW

The Opinion of the Superior Court, Law Division, State of New Jersey is printed in Appendix C at a-4. The Opinion of the Appellate Division of the Superior Court of New Jersey is printed in Appendix A at a-1. The Order of the Supreme Court of New Jersey denying the Petition for Certification is printed in Appendix B at a-3.

JURISDICTION

The decision of the Supreme Court of the State of New Jersey was filed on June 30, 1986. Petitioners invoke the Jurisdiction of this Court under 28 U.S.C. 1257.

CONSTITUTIONAL PROVISION INVOLVED

Petitioners allege a violation of their due process and equal protection rights under Amendment XIV of the United States Constitution which reads as follows:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES AND RULES INVOLVED

N.J.S.A. 54:4-1 *Et. Seq.* (Local Property Tax Law)

N.J. Rules 4:69-6(c)

STATEMENT OF THE CASE

On February 21, 1985, plaintiff Middlesex County Board of Taxation filed an action in lieu of prerogative writ in the nature of mandamus, with the Superior Court, Law Division, seeking enforcement of a previously issued revaluation order.

On May 6, 1985 certain defendants filed an answer containing a counterclaim against the plaintiff and the third party complaint against the Governor, the Treasurer, the Director of the Division of Taxation, the Attorney General, Legislative Leaders and members of the Middlesex County Board of Taxation challenging the revaluation order on the following grounds:

1. That revaluation will so increase the property tax load on those property owners least able to pay the alleged increase in the taxes so as to constitute the taking of the property in violation of due process under the federal and state constitutions.

2. That revaluation will deny certain taxpayers of Perth Amboy equal protection of the laws by denying them rights and privileges which other taxpayers will be receiving.

3. That municipal matters being co-extensive with taxing districts for the purposes of raising property taxes for county, municipal, and for school services are arbitrarilly established in favor of certain citizens to the detriment of other citizens.

4. That the system of providing state aid to municipalities is arbitrary and violates the New Jersey and United States Constitution.

5. That the present state tax system has overburdened Perth Amboy to the extent that it is unable to provide its citizens with the essential services that they are entitled to under the State and United States Constitutions.

Petitioners contended that the aforesaid constitutional issues fell within the "interest of justice exception" to the statute of limitations contained under New Jersey court rule 4:69-6C pertaining to actions in lieu of prerogative writs.

Respondent filed a motion for summary judgment. In response to respondent's motion petitioners argued among other things, that the record was incomplete, that the petitioners were not given an opportunity for discovery and therefore respondent's motion was not ripe for summary judgment. In the alternative, petitioners asserted that should the court review the matter on its merits, the aforestated constitutional challenges required a denial of respondent's motion for summary judgment.

Judge Michael Andrew sitting in the Superior Court, Law Division, Middlesex County, State of New Jersey ruled that the petitioners attempt to create a public interest exception to the forty-five day limitation failed since the constitutional issues raised did not rise to the level necessary to overcome the forty-five day limitation. Secondly, the enforcement of the revaluation order would not work an injustice but would rather advance the constitutional goal of equality and sharing of the burden of government.

Hence, the counterclaim and third party complaint were ruled untimely and respondent's motion for summary judgment was granted.

The Appellate Division affirmed, per curiam, the opinion of Judge Andrew that the perceived inequities and the system complained of by the petitioners were not remedial by way of their broad based attack in a judicial forum. See *Robinson* v. *Cahill* 62 N.J. 473, 502-503 (1973) cert. denied 414 U.S. 976 (1973).

A notice of Petition for Certification was filed on April 22, 1986 to the Supreme Court of the State of New Jersey. That petition was denied by Court Order filed June 30, 1986.

REASONS FOR GRANTING THE WRIT

1. NEW JERSEY'S LOCAL PROPERTY TAX LAW, N.J.S.A. 54:4-1 *ET. SEQ.* IS UNREASONABLE, ARBITRARY AND CAPRICIOUS, THEREBY VIOLATING PETITIONERS DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

While the State Legislature has broad powers to enact laws, it may not enact a law that violates a federal constitutional provision.

The Local Property Tax Law (N.J.S.A. 54:4-1 *et. seq.*) provides for taxing districts that are co-extensive with the physical and geographic boundaries of the municipalities in this State. Accordingly, there are hundreds of districts in the State, each responsible for assessing and collecting taxes from its residents. The real property tax collected from each resident is used to pay for municipal services, the cost of running the county government, and local school expenses. See *Switz* v. *Kingsley*, 37 N.J. 566, 572 (1962). The amount of tax collected and the level of services received by a resident in a municipality is based upon the value of real

property within the municipality's border. That there are significant discrepancies in the value of real property (wealth) among taxing districts (municipalities) is an undisputed fact. See *Robinson* v. *Cahill* 118, N.J. Super 223, 228 (1972). By creating taxing districts that are co-extensive with municipal boundaries the Legislature has established the method of raising funds for municipal, county and school services which is totally unrelated to the need for public services in a particular area of the state or to the ability of the taxpayers in a particular area to pay for the services that are needed. Not only is the system whereby taxing districts are co-extensive with municipal boundaries not rationally or reasonably related to the legislative purpose of the Local Property Tax Law but it produces the exact opposite result.

The infirmities of the Local Property Tax Law, acute on the municipality by municipality basis, are compounded by the further capriciousness in establishing arbitrary county taxing districts. The same local taxing districts that are unable to raise adequate revenue to provide for municipal services, as compared to other local taxing districts with fewer needs and greater wealth, are also required to raise substantially greater revenues for county government. Because Perth Amboy is in Middlesex County, it must bear an admittedly disproportionate share of the cost of state and county governmental services than if it were in a more affluent county. See *Bonnet* v. *State* 141 N.J. Super 177, 226 (Law Div. 1976), aff'd 155 N.J. Super 520 (App. Div. 1978)

The Courts of New Jersey recognize that solutions to land use, zoning and housing problems extend beyond the boundaries of a particular municipality. *So. Burl. Cty. N.A.A.C.P.* v. *Mt. Laurel Twp.*, 67 N.J. 151 (1975), *cert. denied*, 423 U.S. 808 (1975). Citing from Chief Justice Vanderbilt's opinion in *Duffcon Concrete Products, Inc.* v.

Borough of Cresskill, 1 N.J. 509, 513 (1949), the court in *Mt. Laurel* stated:

> " . . . The effective *development* of a region should not and cannot be made to *depend upon the adventitious location of municipal boundaries*, often prescribed decades or even centuries ago, and based in many instances on considerations of geography, of commerce, or of politics that are no longer significant with respect to zoning. The direction of *growth of residential areas* on the one hand and of industrial concentration on the other *refuses to be governed by such artificial lines.* Changes in methods of transportation as well as in living conditions have served only to accentuate the unreality in dealing with zoning problems on the basis of the territorial limits of a municipality. (emphasis supplied) 67 N.J. at 177-178."

This focus, emphasis, and approach of our State Supreme Court to the need for regional or extra municipal solutions to complex problems such as, land use, zoning, and housing has been resoundingly reaffirmed in *Mount Laurel II*. As the Court opined in *Mount Laurel II*,

> *While the State may not have the ability to eliminate poverty, it cannot use that condition as the basis for imposing further disadvantages. Mt. Laurel II*, supra. (emphasis supplied).

Providing a reasonable manner of assuring the citizenry of this state adequate fire and police protection should be no less a concern of the state than the providing of shelter. Indeed, Art. I. par. 1 of our State Constitution provides:

> All persons are by nature free and independent, and have certain natural and unalienable rights,

> among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

To the extent government recognizes that shelter and housing comprise a basic human need, *Mt. Laurel*, supra, 67 N.J. at 178-179, it cannot act in a manner that will have the effect of depriving citizens of their homes by virtue of an unfair and confiscatory tax system. Both land use regulation and taxing regulation are guided by the general welfare and police power. In the context of zoning, the State Supreme Court has expressly stated that:

> Municipalities must zone primarily for the living welfare of people and *not for the benefit of the local tax rate.* (footnote omitted) (emphasis supplied) *Mt. Laurel*, supra, 67 N.J. at 18.

In *Mt. Laurel II*, the Supreme Court acknowledged that prior to the first *Mt. Laurel* opinion the Court believed its hands were tied and that "*Mount Laurel* obligation(s)" could not properly be allocated because of the method of distributing the tax burden in New Jersey and because zoning was not permitted on a regional basis. *Mt. Laurel II*, 92 N.J. 158, 456 A2d 390 (App. Div. 1983).

However, in order to correct a grossly inequitable situation the Court "discovered" a constitutional mandate which permitted it to override the law as therefore interpreted with regard to zoning. In view of the same gross inequities and the same parochial interests, there is no reason not to extend the constitutional mandate to the tax burden, etc. as well as zoning laws.

What is applicable to municipalities is also applicable to the state. The state tax system, which elevates the preservation of historical geographical boundaries over the

promotion of the general welfare of all the people in this state is an arbitrary and perverse relic violative of the most fundamental purpose of government. When county or municipal boundaries run afoul of basic constitutional principles, courts have not hesitated to disregard them. *See Davenport* v. *Apportionment Comm.*, 65 N.J. 125 (1974): *Scrimminger* v. *Sherwin*, 60 N.J. 483 (1972).

The legislature has long recognized the unwisdom of solving many public needs on the basis of municipal and county boundaries. It has sanctioned the establishment of multi-district utility authorities (N.J.S.A. 40:14B-1 *et seq.*), multi-district school systems (N.J.S.A. 18A:13-1 *et seq.*), multi-district port development facilities (N.J.S.A. 12:11A-1 *et seq.*), multi-district sewerage authorities (N.J.S.A. 40:14A-1 *et seq.*, multi-district public improvement projects (N.J.S.A. 40:48B-1 *et seq.*, and multi-district park, beach or recreation facilities (N.J.S.A. 40:61-35 *et seq.*). It has permitted the creation of districts to deal with problems of beach erosion (N.J.S.A. 40:68-27 *et seq.*), fire (N.J.S.A. 40A:17-70 *et seq.*), and soil conservation (N.J.S.A. 4:24-7 *et seq.*). Although this list is not intended to be all inclusive it does illustrate that certain problems lend themselves to solutions that transcend boundary lines based on centuries old considerations of geography, commerce and politics. *See Duffcon Concrete Products, Inc.*, supra 1 N.J. at 513. Boundaries which no longer bear a rational relationship to the purposes for which government intended them are arbitrary and capricious.

The constitutional guarantee of substantive due process mandates that the operation of a statute not be unreasonable, arbitrary or capricious and that the means selected bear a rational relationship to a permissible legislative purpose. *Velmohos* v. *Maren Engineering Corp.*, 83 N.J. 282, 297 (1980). The legislative purpose of the Local Property Tax Law N.J.S.A. 54:4-1 *et seq.* is the

equalized distribution of the burden of local government upon taxable real property. The purpose is frustrated by the present system or utilizing traditional geographic and political boundaries as taxing districts. That basis of establishing taxing districts must be invalidated.

2. THE PERPUTATION OF THE LOCAL PROPERTY TAX LAW, N.J.S.A. 54:4-1 *ET SEQ.*, DENIES TO THE CITY OF PERTH AMBOY AND ITS CITIZENS THE EQUAL PROTECTION OF THE LAW IN CONTRAVENTION TO THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

Although it is true that the Legislature has discretion in establishing classifications in the field of taxation, this discretion is not unbridled and cannot constitutionally discriminate among citizens in this State. *McKenny* v. *Byrne* 82 N.J. 304, 319, n5 (1980). All residents of this State are entitled to equal protection of the laws with regard to essential government services. As was noted by the court in *Robinson* v. *Cahill*, 62 N.J. 473, 482 (1973).

> "If the monies are raised by local taxation in the way which permits the different dollar expenditure per affected resident, the program is invalid as to the beneficiaries unless a state aid program fills in the gap. It would then follow that a state aid program which did not neutralize local inequalities would itself deny equal protection as to beneficiaries . . . "

The very fact that the legislature of the State of New Jersey has been forced to create a plethora of aid programs to supplement the funds received via local property taxes by municipalities such as Perth Amboy, is an admission that the Local Property Tax Law permits vastly different sums of money to be raised and distributed among residents in this

state to provide essential government services. Not only are these various aid programs "band aid" solutions designed to hide and perpetuate a constitutionally invalid system of funding and distributing essential government services to the citizens of the state, but it is evident that by piggybacking the aid programs on the local property tax structure the inequities among services available to residents in this state continue to vary incredibly from municipality to municipality. These programs and the local property tax structure itself failed to neutralize local inequalities. It is evident that for the purpose of providing essential government services, the very institution of local government itself denies equal protection. See *Robinson* v. *Cahill*, 62 N.J. at 500. By placing the basic burden of raising taxes needed for essential government services upon local government and limiting local government's resource base to the value of real property fortuitiously located within that local government's arbitrarily created borders, the Legislature has perpetuated a system that treats different citizens in this state in a grossly disparate manner. Chief Justice Weintraub writing for the New Jersey Supreme Court succinctly summarized the problem when he stated:

> "Unequal demands upon unequal tax basis result in statewide inequality as to benefits or as to tax burden, Id. at. 500 . . . "u

Legislative flexibility in the field of taxation cannot be a shibboleth for those seeking to perpetuate a policy that denies all persons in this state equal protection of the laws as guaranteed in the Fourteenth Amendment of the United States Constitution. The present method of revaluation and taxation by local government combined with supplementary state aid is not rationally or reasonably related to achieving the goals of making government services available to all residents in this state.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted so this Court can review this matter.

Respectfully submitted,

OLIVER R. KOVACS
Counsel of Record
Kovacs, Rader & Feldman
Attorneys for Petitioner

Dated: August 25, 1986

APPENDICES

APPENDIX A — OPINION OF SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION FILED APRIL 7, 1986

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-5181-84T1

MIDDLESEX COUNTY BOARD OF TAXATION, *Plaintiff-Respondent,* *v.* CITY OF PERTH AMBOY, et al., *Defendants-Appellants.*	Original Filed April 7, 1986 Elizabeth McLaughlin, Clerk

Submitted March 25, 1986 — Decided April 7, 1986

Before Judges Pressler, Bilder and Gruccio.

On appeal from the Superior Court, Law Division, Middlesex County.

Kovacs, Rader & Feldman, attorneys for appellants (Richard P. Feldman, on the brief).

W. Cary Edwards, Attorney General of New Jersey, attorney for respondent (James J. Ciancia, Assistant Attorney General, of counsel; Harry Haushlater, Deputy Attorney General, on the brief).

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

PER CURIAM

Defendants City of Perth Amboy and a number of its government officials appeal from a summary judgment entered by the Superior Court, Law Division, enforcing an order issued by plaintiff Middlesex County Board of Taxation requiring the city to undertake a real property revaluation. By its counterclaim, defendants sought to raise a variety of federal and state constitutional challenges to the validity of this State's local real property taxation system.

Having reviewed the record and the argument of counsel, we agree with Judge Andrews that the perceived inequities in the system complained of by plaintiff are not remedial by way of their broad-based attack in a judicial forum. *See Robinson v. Cahill,* 62 *N.J.* 473, 502-503 (1973), *cert.* den. 414 *U.S.* 976 (1973). *Bonnet v. State,* 155 *N.J.Super.* 520, 529-530 (App. Div. 1978), aff'd *o.b.*, 78 *N.J.* 325 (1978). Accordingly, we affirm substantially for the reasons expressed by Judge Andrews in his oral opinion.

Affirmed.

APPENDIX B

APPENDIX B — ORDER OF THE SUPREME COURT OF NEW JERSEY DENYING PETITION FOR CERTIFICATION FILED JUNE 30, 1986.

SUPREME COURT OF NEW JERSEY
C-1057 SEPTEMBER TERM 1985
25,551

MIDDLESEX COUNTY BOARD OF TAXATION, *Plaintiff-Respondent,* *v.* CITY OF PERTH AMBOY, et al, *Defendants,* and GEORGE J. OTLOWSKI, et al, *Defendant-Third Party Plaintiffs-Petitioners,* *v.* THOMAS H. KEAN, et al, *Third-Party Defendants.*	ON PETITION FOR CERTIFICATION Filed Supreme Court June 30, 1986 Clerk

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-5181-84T1 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert L. Clifford, Presiding Justice at Trenton, this 27th day of June, 1986.

CLERK OF THE SUPREME COURT

APPENDIX C — ORAL OPINION OF JUDGE ANDREW, JR. SUPERIOR COURT OF NEW JERSEY, TRIAL LEVEL, DATED JUNE 7, 1985

MR. HAUSHALTER: Yes, yes, your Honor.

MR. LEVINE: Thank you.

THE COURT: All right, gentlemen, I want to make a complete record with regard to it because I think the issue is extremely important. And I recognize the arguments that have been made by Mr. Kovacs and by Mr. Haushalter.

Specifically, the motion that is before me today is one for summary judgment which has been brought by plaintiff, the Middlesex Board of Taxation, seeking court enforcement of a revaluation order directed at defendant, the City of Perth Amboy.

Plaintiff issued an order on October 1, 1984 requiring defendant and its officials to commence a real property revaluation to be affective for the 1986 tax year. In accordance with N.J.A.C. 18:12A-1.14(b), the revaluation order was approved by the Director of the Division of Taxation on October 22, 1984.

Defendants did not appeal the validity or propriety of the revaluation order within the applicable 45-day limitation period prescribed by N.J.S.A. 54:51A-1(a), nor have defendants to date attempted to adopt a program for implementation of a revaluation.

On February 21, 1985, plaintiff filed the present action in lieu of prerogative writs in the nature of mandamus with the Superior Court, Law Division seeking court enforcement of the revaluation order.

On May 6, 1985, certain defendants filed an answer containing a counterclaim against plaintiff and a third-party complaint against the Governor, the Treasurer, the Director of the Division of Taxation, the Attorney General, legislative leaders and the members of the Middlesex County Board of Taxation challenging the revaluation order on the following grounds.

One, that revaluation will so increase the property tax load on those property owners least able to pay the alleged increase in taxes so as to constitute a taking of the property in violation of due process under the federal and state constitutions.

Two, that revaluation will deny certain taxpayers of Perth Amboy equal protection of the law by denying them rights and privileges which other taxpayers will be receiving.

Three, that the municipal boundaries by being coextensive with taxing districts for purposes of raising property taxes for county and municipal and for schools are arbitrarily established and favor certain citizens to the detriment of other citizens.

Four, that the revaluation will have a negative impact upon the minority population of Perth Amboy in violation of the New Jersey and the United States Constitutions and 42 U.S.C.A., Section 1983. I note parenthetically that the defendants did not brief the particular question as to a violation of Section 1983, therefore, I've concluded that this allegation was abandoned.

Five, that the system of providing state aid to municipalities is arbitrary and violates the New Jersey and the United States Constitutions.

Six, that the present State tax system has overburdened Perth Amboy to the extent that it is unable to provide its

citizens with the essential services that they are entitled to under the State and the United States Constitutions.

Alleging that there are no material facts in dispute, plaintiff bases its motion for summary judgment on the following grounds.

One, the County Tax Board is empowered to order revaluation which as in the case of defendants will correct inequities in assessments under local property tax law. This has not been disputed by defendants.

Two, defendants third-party plaintiffs cannot now by way of counterclaim or otherwise challenge the propriety of the revaluation order because the applicable statutory limitation period has expired.

Three, this case does not fall into an exception which might permit extension of the statutory limitations period.

And four, accepting defendant third-party plaintiff's counterclaim and complaint as timely, defendants third-party plaintiffs are without standing to raise any constitutional challenge to the local property tax laws.

Moreover, substantive consideration of the constitutional challenges on the merits will reveal that the general local property tax scheme is valid.

Defendant third-party plaintiffs respond to the present motion alleging, one, summary judgment should be denied because the record before the Court is incomplete and defendants should be permitted additional discovery.

Two, defendant, the City of Perth Amboy, has standing to challenge the constitutionality of the local property tax scheme.

Three, the constitutional challenges presented rise to the level necessary to enlarge the applicable statutory limitation period so as to permit consideration of the issues raised.

And four, consideration of the constitutional challenges on the merits reveals that the New Jersey local property tax scheme N.J.S.A. 54:4-1 et seq is constitutionally infirm.

To being with, I cannot find merit in defendants' claim that summary judgment would be premature if granted. Defendants have had since October of 1984 to contest the revaluation order in the proper forum and obtain discovery but have chosen to do nothing until required to respond to the action instituted by plaintiff to secure judicial compulsion of plaintiff's revaluation order.

Defendants' failure to act will not bar substantive consideration of plaintiff's motion.

Defendants have admitted to exceeding the 45-day limitation period within which to challenge actions of the County Board pursuant to N.J.S.A. 54:51A-1(a). While plaintiff asserts defendants untimely filing as grounds for summary judgment, defendants contend that the issues raised by their challenges to the revaluation order warrant an extension of the 45-day limitation period.

Pursuant to Rule 4:69-6 actions in lieu of prerogative writs must be filed, "Within 45 days after the accrual of the right to review." Under Rule 4:69-6(c) this limitation period may be enlarged "where the interest of justice so requires." I am not certain that the timeliness of defendants' defensive claims should be measured by Rule 4:69-6 because the limitation period prescribed is set forth in N.J.S.A. 54:51A-1(a) which is a taxing statute limitation period and not a limitation period for actions in lieu of prerogative writs. But

because it is my firm belief that the same policy consideration should control in the Superior Court as in the Tax Court relative to proceedings involving tax assessments, I consider it preferable to consider defendants' defensive claims in the context of a filing in the Superior Court in lieu of prerogative writs.

Subsections C of Rule 40 — of Rule 4:69-6 has been interpreted to permit extension of the 45-day limitations period under two circumstances which are potentially applicable to the facts of this case. Namely, where the pleadings raise an important public rather private interest which requires adjudication or clarification; and where the pleadings raise novel and substantial constitutional questions.

The presence of a novel and substantial constitutional issue raised by defendants in the present case requires consideration of the relative merits of each constitutional attack. Defendants begin by alleging that enforcement of N.J.S.A. 54:4-1 et seq, the local property tax law, directly contravenes Article 8, Section 3, paragraph 1 of the New Jersey Constitution and the public policy of the State. The constitutional provision provides in part that "the clearance replanning development or redevelop-ment of blighted areas shall be of public purpose and public use for which private property may be taken or acquired."

Defendants have detailed the history of this provision and have pointed out that the tax clause of the New Jersey Constitution in Article 8, Section 1, paragraph 1(a) provides that property shall be assessed for taxation under general laws and by uniform rules according to the same standard of value. This particular provision further provides "except as otherwise permitted herein." From this exception language defendants argue that the avoidance of blight constitutes an exception to the same standard of value and

uniformity requirement and that Perth Amboy would qualify for relief under the statutory provisions implementing the constitutional authority for blighted property.

I find this reasoning is flawed for two reasons. First, defendants have misconstrued the impact of the phrase "except as otherwise permitted herein." As the Tax Court recounted in its opinion in *Centex Homes of New Jersey* v. *Manalapan Township* 4 N.J. Tax 599 at 605-606, that phrase was made an amendment to our State Constitution for the purpose of accommodating a legislative enactment granting preferential tax treatment to farmland in this State. The Farmland Assessment Act of 1964 N.J.S.A. 54:4-23 et seq, accords preferential treatment to taxation of real property actively devoted to agricultural use. However, in 1962 our Supreme Court declared that any legislative enactment which permitted preferential tax treatment to farmland was in violation of Article 8, Section 1, paragraph 1 of the State Constitution which mandated that all real property be assessed according to the same standard of value. *Switz* v. *Kingsley*, 37 N.J. 566 at 585.

What made the Farmland Assessment Act as it presently operates a constitutional statute was the amendment of Article 8, Section 1, paragraph 1 which was drafted to enable taxation of farmland to deviate from the standard of value applied to other real property in the name of advancing the public policy of encouraging retention of farmland. The only exception to the criteria of the same standard of value and by uniform rule is the assessment of duly qualified farmland. And that was the only exception that was intended by the amendment to the Constitution in 1963, as is readily seen by a review of Senate concurrent resolution number 16 which was adopted in May of 1963.

Keeping the origin of this constitutional amendment in mind, clearly it does not serve the purpose suggested by defendants.

Secondly, defendants' argument is predicated on the assumption that a revaluation to bring all property values into line where there exists as present a disparate assessment pattern would result in total blight in Perth Amboy. This is total speculation and conjecture. Even if the two constitutional provisions could be construed to have the provision authorizing special treatment for blighted areas as an exception to the same standard of value and uniform rules requirement of Article 8, Section 1, paragraph 1(a) of the Constitution, the conclusion proposed is that an admittedly disparate assessment practice should be continued to avoid possible blight. I find defendants' position to be totally lacking in substance. I say admittedly disparate assessment practice because defendants have not seen fit to controvert any of plaintiff's findings and conclusions which resulted in plaintiff's issuance of a revaluation order on October 1, 1984.

The legislature can provide for exemptions from taxation on their proper classifications to include those for blighted areas as advanced by defendants. But once real property has been designated for local property taxation, it must be taxed by a uniform rules according to the same standard of value. Here true value or fair market value.

Defendants' second argument is that the State system which provides that taxing boundaries be co-extensive with the geographic boundaries of municipalities and counties is unreasonable, arbitrary and capricious and violates the United States and New Jersey Constitutions. The argument is made that some local taxing districts are unable to raise

adequate revenue to provide for municipal services as compared with other taxing districts with fewer needs and greater wealth.

Further, that because Perth Amboy is in Middlesex County, it must bear a large share of the cost of County government. This argument was answered in *Bonnet* v. *State*, 155 N.J. Super 520, at 527. The Appellate Division in that case upheld the administrative functions where they were attacked on the grounds that property taxes should be uniform throughout the State rather than separately on a county by county basis. In so doing, it quoted from *Robinson* v. *Cahill*, 62 N.J. 473, as follows "the short answer is that the tax clause was not intended to say that a State function may not be delegated to local government to be met by local taxation. As we noted in point one, local government is simply an arm of the State with respect to the many state functions which the State decides shall be performed through local government. The tax clause that does not restrict the State with respect to that decision. Rather, it means that if the State decides to handle a service at state level, and to do so on the basis of a property tax, it must tax all taxable property in the State rather than only property in a part of the State. And that if the responsibility for the state function is assigned to local government, the local tax must fall uniformly upon all taxable property within the county or the municipality as the case may be."

Accordingly, this Court finds no merit in defendants' argument that the taxing district boundaries violate the United States and New Jersey Constitutions.

Defendant next argues that a revaluation would discriminate against and would have a negatively disportionate impact on the minority population of Perth Amboy and violates both federal and state Constitutions. However, the revaluation order contains no provision which would treat

any particular taxpayer differently. It merely seeks to treat all in the same manner by complying with the constitutional same standard of value and uniform rules mandate. Indeed, defendants' position would attempt to continue an uncontroverted discriminatory assessment pattern.

Defendant next argues that the need for government services and the ability to provide those services has resulted in a situation of a municipal overburden in Perth Amboy which is perpetuated and exacerbated by the local property tax law. This argument which in affect was also unsuccessfully put forward in *Bonnet* v. *State* must fail for the same reasons stated in that particular case.

Further, a revaluation will not increase the municipal burden but will redistribute it in accordance with the constitutional requirement, the taxes be assessed by uniform rules according to the same standard of value. Defendant recognizes that the present situation in Perth Amboy is not in accordance with the constitutional mandate of uniformity. Consequently, a portion of the taxpayers of that taxing district are bearing an unequal tax burden because taxes are assessed either in excess of fair market value or because some taxpayers are paying taxes assessed at a greater percentage of fair market value than others.

Defendant next argues that revaluation will result in an increase in property taxes to a confiscatory level. This position is totally lacking in merit since a revaluation can only result — if properly done, can only result in an increase tax in those situations where a taxpayer is presently paying less than his fair share of the cost of government.

Defendants' last argument is that the local property tax law denies Perth Amboy and its citizens the equal protection of the law and is in violation of both the federal and state Constitutions in that governmental services vary among taxing districts. There again, this particular position was

advanced and rejected in *Bonnet* v. *State* which specifically upheld the authority of the State to delegate its responsibilities to its subdivisions despite unequal burdens among counties. The fact that various statutory provisions which have attempted to relieve municipal burdens may not be adequate is not sufficient reason to justify a departure from the general principals enunciated in *Bonnet* v. *State*.

Based on what I have stated thus far, it seems evident that the defendants' constitutional challenges are neither novel nor substantial, and as such do not warrant subverting the applicable 45-day limitation period.

But defendants also contend that there is present in this case a public rather than private interest that requires adjudication and thereby warrants permission to raise an untimely challenge. Defendants base their argument on the fact that a successful challenge to the local property tax scheme will impact on all residents of Perth Amboy through resulting changes in revenue raising and allocation.

Challenges rising to the level of public interest necessary to disregard technical time restraints have been recognized in cases involving actions of municipal governing bodies which impacted upon the general population in the municipality. In *Weehawken Environment Committee, Inc.* v. *Township of Weehawken*, 161 N.J. Super 381, at 389-390, the Court granted a public interest exception to the 45-day limitation period of Rule 4:69 based on extensive public opposition to the municipality's resolution granting tax exempt status to a controversial private development project.

Similarly, in *Reahl* v. *Randolph Township Municipal Utilities Authority*, 163 N.J. Super 501, at 509-510, the Court permitted late filing of an action in lieu of prerogative writs where plaintiffs challenged the power of the Municipal Utilies Authority to impose service charges on residents of

single family dwelling units. In this regard, it suggested that the case of *Cervase* v. *Kawaida Towers, Inc.*, at 124 N.J. Super 547 which was affirmed on the opinion below in 129 N.J. Super 124, be consulted.

The public interest exception rests on the presence of an issue and I emphasis the word issue affecting the public which requires adjudication or clarification. In the present case, the public interest exists in the affect of the present distribution of the tax burden on residents in the City of Perth Amboy. Each resident's right to have the disparities in assessment equalized is the public interest which should be adjudicated. However, the distinction between public interest as an exception as applied in the cases that I have referred to and the interest of the public in the present case is that plaintiff herein has recognized the present inequality in assessment and seeks to provide a remedy through revaluation.

Defendants on the other hand see the public interest as a deprivation of constitutional rights and suggest that the violations will go unremedied absent consideration of the affects the present tax scheme on constitutional grounds.

On the contrary, the order to revalue property presently at issue is based entirely on plaintiff's recognition of the adverse and inequitable impact of the present level of assessment of residents of Perth Amboy.

The defendants have attempted to create a public interest exception to the 45-day limitations period by alleging that the public interest rests on constitutional grounds and can only be adjudicated by a substantive consideration of the constitutional attacks presented in the counterclaim and third-party complaint. As I have previously indicated, defendant's attempts must fail for two reasons.

First, as has already been stated, the constitutional issues raised do not rise to the level necessary to overcome the 45-day limitation period.

Secondly, absent any constitutional issues, there are no issues in this case that require judicial resolution. Although a revaluation affects the public interest, there is no dispute that it is appropriate in Perth Amboy in consideration of the uniformity provision in our State Constitution from which defendants are not excluded.

Enforcement of plaintiff's revaluation order will not work an injustice, but rather will advance the constitutional goal of equality in sharing the burden of government.

In light of the defendants' failure to successfully present an exception to the 45-day limitations period, I conclude that the policy considerations relating to limitation periods are paramount and mandate a conclusion that the tax — excuse me — that the counterclaim and third-party complaint are untimely. It is well settled that tax determination should reviewed in a manner in strict conformity with statutory time limitations.

Accordingly, plaintiff's motion for summary judgment is granted. In view of my ruling, I find it unnecessary to pass upon the issue which has been raised of whether Perth Amboy as a municipal corporation had the standing to challenge the constitutionality of a statute.

I have reviewed the order submitted by Mr. Haushalter and I find that it is appropriate in this particular case, to include the provision that Perth Amboy and its tax assessor shall accomplish a complete revaluation to be effective not for the 1986 tax year as originally envisioned by the order of the County Board, but for the 1987 tax year and thus must be completed by November 1, 1986.

As indicated in the order that I will sign, this Court will retain jurisdiction of this matter in order to ensure full compliance with the mandate and permit any party to make application for further relief. And I recite this provision because of Mr. Levine's concern with regard to perhaps the Town will not be able to comply with the requirement for a complete revaluation by November 1, 1986. However, I think it's implicit within the order as submitted by plaintiff that all that the County Board is seeking is that Perth Amboy, with all due haste, proceed with the implimentation of the revaluation which is sorely needed in Perth Amboy. And if there are any good reasons as to why it cannot be accomplished by this stated date. This Court is available to listen to those reasons.

Absent any substantial reasons for a delay, it is the order of this Court that Perth Amboy impliment revaluation to be effective for the 1987 tax year.

I think that about covers it. Thank you very much, gentlemen.

MR. HAUSHALTER: Thank you, Judge.

MR. KOVACS: Thank you, Judge.

MR. LEVINE: Thank you, Judge.

(Court adjourned.)

* * * * * * * *

Supreme Court, U.S.
FILED
NOV 3 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-411

In The

Supreme Court of the United States

October Term, 1986

GEORGE J. OTLOWSKI, Mayor of Perth Amboy; PAUL ZITO, ARMAND R. CANNAMELA and ANGEL QUINONES, individually and as members of the City Council; JAMES GOUMAS, Tax Assessor of the City of Perth Amboy, and C. MARION LIPIRA, Tax Collector of the City of Perth Amboy,

Petitioners,

vs.

THOMAS H. KEAN, Governor of the State of New Jersey; MICHAEL M. HORN, Treasurer of the State of New Jersey; JOHN R. BALDWIN, Director of the Division of Taxation of the State of New Jersey and the DIVISION OF TAXATION OF THE STATE OF NEW JERSEY: IRWIN I. KIMMELMAN, Attorney General of the State of New Jersey; CARMEN A. ORECHIO, President of the New Jersey Senate; and the NEW JERSEY SENATE: ALAN J. KARCHER, Speaker of the General Assembly of the State of New Jersey; and the GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY; THE MIDDLESEX COUNTY BOARD OF TAXATION, a body politic of the State of New Jersey; BARBARA GALLAGHER, President of the Middlesex County Board of Taxation; FRANKLIN F. MURPHY, Member of the Middlesex County Board of Taxation; ANGELA J. SZYMANSKI, County Tax Administrator of the Middlesex County Board of Taxation; all in their official and individual capacities,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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COUNTERSTATEMENT OF THE CASE

Petitioners, the City of Perth Amboy ("Perth Amboy") in the State of New Jersey and certain of its public officials, are seeking, by writ of *certiorari,* to have this Court review a decision by the New Jersey Superior Court, Appellate Division, which the Supreme Court of New Jersey refused to review. The New Jersey Appellate Division affirmed a trial court judgment requiring Perth Amboy to implement a municipal-wide revaluation of its real property under the Local Property Tax Law, *N.J.S.A.* 54:4-1 *et seq.* Perth Amboy has never questioned the need for a revaluation in said municipality but has challenged the validity of the entire local property tax system in the State of New Jersey under the Equal Protection and Due Process Clauses as a means of avoiding the implementation of the revaluation program. Petitioners thus maintain that municipal boundaries, by being coextensive with taxing districts for purposes of raising property taxes for county and municipal governments and for school districts, are arbitrarily established and create unequal revenue raising districts. Neither the trial court nor the Appellate Division addressed this challenge in any detail primarily because the petitioners raised this issue in a collateral proceeding and in an untimely fashion as a means of avoiding the implementation of a necessary revaluation program.

The respondents are Thomas H. Kean, Governor of New Jersey, and various other New Jersey officials and agencies, including the Middlesex County Board of Taxation ("County Board"). The County Board issued an order on October 1, 1984 directing the City of Perth Amboy and its officials to commence a real property revaluation

to be effective for the 1986 tax year. Under New Jersey's local property tax system, the revaluation order required the approval of the Director, Division of Taxation, who approved the order on October 22, 1984. Following the issuance and approval of the revaluation order, Perth Amboy had the right to challenge the validity of the order by filing a complaint with the Tax Court of New Jersey within 45 days. Perth Amboy, however, failed to appeal the validity of the order at any time and has to date failed to comply with the revaluation order since its issuance.

The County Board filed a complaint, in the nature of *mandamus*, with the New Jersey Superior Court, Law Division, on February 19, 1985, naming the City of Perth Amboy and its responsible officials as defendants and seeking court enforcement of the revaluation order. The defendants filed an answer to the complaint, a counterclaim and a third party complaint challenging the entire local property taxing scheme on federal equal protection and due process grounds and additional state constitutional grounds. As part of their legal challenge, the petitioners maintained that they required detailed discovery from the respondents in order to accumulate the necessary data to substantiate their contentions.

The matter came before the trial court on a motion for summary judgment filed by the County Board. In an oral opinion rendered on June 7, 1985, the trial court held that the County Board properly issued the revaluation order in accordance with applicable constitutional and statutory standards, that such order was entitled to judicial enforcement and that defendants were raising challenges to the property tax system which were untimely and which involved matters of policy for the New Jersey Legis-

lature to resolve (App. 4A). The court's determination was reflected in a final order entered on June 7, 1985. The petitioners filed a notice of appeal with the Appellate Division from the whole of the trial court's judgment. The Appellate Division, in an opinion dated April 7, 1986, affirmed the trial court substantially for the reasons expressed in its oral opinion (App. 1A). Petitioners filed a notice of petition for certification with the Supreme Court of New Jersey seeking a review of the whole of the judgment entered by the Appellate Division. In an order dated June 27, 1986, the Supreme Court of New Jersey denied certification (App. 3A).

—o—

ARGUMENT

SINCE THE FEDERAL EQUAL PROTECTION AND DUE PROCESS ISSUES CHALLENGING THE ENTIRE NEW JERSEY LOCAL PROPERTY TAX SYSTEM WERE TIME BARRED AS A MATTER OF STATE LAW, THE PETITION FOR CERTIORARI DOES NOT PRESENT A PROPER FEDERAL CONSTITUTIONAL ISSUE AND SHOULD BE DENIED.

The county boards of taxation,* as agents of the New Jersey Legislature, have the responsibility of implementing the state constitutional directive concerning the taxation of real property:

> Property shall be assessed for taxation under general laws and by uniform rules. All real property

---

* County boards of taxation are state agencies which exercise administrative authority on a county-wide basis regarding the local property tax system. *N.J.S.A.* 54:3-1 *et seq.* A separate county board of taxation sits in each of New Jersey's 21 counties. *N.J.S.A.* 54:3-2.

> assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value, except as otherwise permitted herein, and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district. [*N.J. Const.* (1947), Art. VIII, § I, par. 1(a)].

This constitutional standard requires that assessments under the Local Property Tax Law, *N.J.S.A.* 54:4-1 *et seq.*, must be based under general laws and uniform rules to secure fairness in the taxing scheme. *Switz v. Kingsley*, 37 *N.J.* 566, 572, 182 *A.*2d 841, 850 (1962). In accordance with this constitutional instruction, the New Jersey Legislature has charged that each county board *shall:*

> . . . secure the taxation of all property in the county at its taxable value as prescribed by law, in order that all property, except such as shall be exempt by law, shall bear its full and just share of taxes. [*N.J.S.A.* 54:3-13];
>
> . . . issue such directions as may be necessary to carry into effect the provisions of this title. [*N.J.S.A.* 54:3-14];
>
> . . . have supervision and control over all officers charged with the duty of making assessments for taxes in every taxing district in the county. Such officers shall be subject to, and shall, in making assessments, be governed by such rules, orders or directions as may be issued by the county board, in the enforcement of the objects of this title . . . [*N.J.S.A.* 54:3-16].

In addition, the Legislature has conferred upon the boards comprehensive authority to:

> . . . revise, correct and equalize the assessed value of all property in the respective taxing districts, increase or decrease the assessed value of any property

> not valued at its taxable value, assess property omitted from any assessment, as provided by law, at its taxable value, and in general do everything necessary for the taxation of all property in the county at its taxable value. [*N.J.S.A.* 54:4-47].

Since the first judicial directive requiring revaluations to correct inequities of assessment practices in *Switz v. Middletown Twp.*, 23 *N.J.* 580, 130 *A.*2d 15 (1957), the New Jersey judiciary has consistently sustained the authority of the county boards to direct municipalities to implement programs of revaluation. In *Switz*, where a property owner prevailed in an action in lieu of *mandamus* to compel reassessment against the municipality in which the property was located, and in *Ridgefield Park v. Bergen County Board of Taxation*, 31 *N.J.* 420, 157 *A.*2d 829 (1960), app. dism. 365 *U.S.* 648 (1961), where a municipality and several of its taxpayers were allowed to maintain a similar action against other municipalities within the county, county boards were joined as defendants. In neither case, however, did the New Jersey courts regard the county boards, which are essentially supervisory bodies with respect to the proper maintenance of assessment rolls, as the appropriate agencies to conduct municipal revaluations. That responsibility rested with the municipalities and their assessors:

> In *Switz* it was noted that basically the problem in many, if not most, of the municipalities was that the assessment rolls were out of hand and hence nothing short of municipal-wide revaluations would bring order out of chaos; that the county board had neither the time nor the funds for so massive an effort; and that accordingly a judgment directing it to perform the basic duties of the assessors would be unwarranted. We expressed our confidence that if the local

> assessors did their job, the county board would not fail in its assigned role. We have no reason to feel differently about the county board in the present case. [*Ridgefield Park v. Bergen County Board of Taxation, supra,* 31 *N.J.* at 432, 157 *A.*2d at 835].

Switz and *Ridgefield Park* were comparatively early cases in the continuing history of the efforts to secure assessments at full taxable value as prescribed by the New Jersey Constitution and statutes and to eliminate inequities caused by the failure of municipalities to do so voluntarily. The law is not self-executing and the county boards are frequently confronted with municipalities that are unwilling to implement revaluations. In these circumstances, a county board has no recourse, if it is to execute its constitutional and statutory mandate, but to order a lax municipality to revalue and, if the order is disregarded, to seek enforcement of the law by judicial compulsion. The New Jersey courts have sustained the authority of a county board to order a revaluation and, where necessary, to seek its enforcement by court action. *Essex County Board of Taxation v. Newark,* 73 *N.J.* 69, 372 *A.*2d 607 (1977).

The revaluation order issued by the Middlesex County Board of Taxation and directed at Perth Amboy was thus consistent with well-settled New Jersey law. It stems from a recognition that the direct responsibility for the maintenance of assessments at the prescribed level of full value rests with the municipal tax assessor. *N.J.S.A.* 54:4-23. It is when the municipal assessor is unable or unwilling to correct widespread deficiencies that the county board orders general revaluation, but then only in accordance with established guidelines and only upon approval by the Director of the Division of Taxation. The enforcement of

the revaluation order by judicial decree is the final step instituted to bring assessments into harmony with the New Jersey Constitution. It is certainly not an occasion appropriate for the municipality to seek still further delay in implementing the needed revaluation by raising issues well beyond the applicable statute of limitations.

A municipality's avenue of appeal from a board's order to revalue is clearly established:

> Certainly a municipality is entitled at some point to be heard as to whether the order of the Board seeking to compel revaluation is proper. Such an opportunity is available by direct appeal from the order of the particular county board of taxation to the Division of Tax Appeals. *N.J.S.A.* 54:2-35. In this case, as is set forth above, the taxing districts were given ample opportunity to present facts and arguments before the Division of Tax Appeals. That they chose to forego this opportunity cannot now afford them a basis for complaining that they have not been heard. . . . The appropriate forum for a full evidentiary hearing is the Division of Tax Appeals. [*Bergen County Board of Taxation v. Bogota*, 114 *N.J. Super* 140, 146, 275 *A*.2d 158, 161 (App. Div. 1971)].

The court in *Bogota, supra*, thus expressly recognized that the character of the action *sub judice* is to enforce the revaluation order by summary proceeding and not to permit an inquiry into the underlying validity of the revaluation order.

Since the *Bogota* decision, the Tax Court of New Jersey was created and assumed the jurisdiction formerly exercised by the Division of Tax Appeals as of July 1, 1979. See *N.J.S.A.* 2A:3A-1 *et seq.* Perth Amboy had ample opportunity to challenge the validity of the revaluation order by filing a complaint with the Tax Court 45

days from the date the Director of Taxation approved the revaluation order on October 22, 1984. *N.J.S.A.* 54:51A-1a; New Jersey Court Rule 8:4-1(a)(2). As the New Jersey courts properly held in this matter, Perth Amboy never filed such an appeal and thereby cannot be permitted in this proceeding and at this juncture to challenge the validity of the revaluation order and the entire local property tax assessing system.

It is well settled in New Jersey that statutes of limitation are particularly significant in the context of tax laws, which generically require that tax determinations are subject to review in strict conformity with statutory time limitations, borne of the exigencies of taxation and the administration of local government. Failure to file a timely appeal is thus a fatal jurisdictional defect. *F.M.C. Stores Co. v. Morris Plains,* 100 N.J. 418, 424, 425, 495 *A.*2d 1313, 1316, 1317 (1985).

The courts below in this matter never seriously considered petitioners' challenge to the local property taxing scheme because the issue was time-barred by the applicable 45-day statute of limitations. It has been consistently recognized by this Court that it will intervene in the state judicial process only to correct wrongs of a federal constitutional dimension and not to interfere with issues that are a matter of state constitutional or statutory law. *Smith v. Phillips,* 455 *U.S.* 209, 221 (1982). In evaluating issues concerning state law, a federal court must defer to the determinations by the state court. *Kolender v. Lawson,* 461 *U.S.* 352, 355 (1983). In this case, the petitioners' challenge to the New Jersey local property tax system was dismissed because it was not raised within the applicable

statute of limitations. Since statutes of limitation have been inherently recognized as matters of state law by this Court, *Guaranty Trust Co. v. York*, 326 *U.S.* 99, 110 (1945), it is evident that the Appellate Division determination in question related to an issue of state law not subject to review by this Court.

However, even if the merits of petitioners' contentions were to be deemed timely raised, they nevertheless involve issues previously considered and rejected by this Court. It is fundamental to federal constitutional principles, particularly under equal protection and due process analysis, that state legislatures have a wide range of discretion in establishing classifications and that such discretion is especially broad in the field of taxation:

> The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. . . . [T]he passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. . . . It has . . . been pointed out that *in taxation, even more than in other fields, legislatures possess the greatest freedom in classification.* Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. . . . [*Madden v. Kentucky*, 309 *U.S.* 83, 87-88 (1940); emphasis supplied].

These principles were reaffirmed in *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 *U.S.* 356, 359 (1973):

> Where taxation is concerned and no specific federal right, apart from equal protection is imperiled,

the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation. As stated in *Allied Stores of Ohio v. Bowers*, 358 *U.S.* 522, 526-527, 3 *L. Ed.* 2d 480, 79 *S. Ct.* 437:

> "The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guaranties of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests. Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation."

The rationale for this broad view of government's taxing powers has been explained as follows:

> [A tax] is . . . a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privilege of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. . . . Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them, and would involve the abandonment of the most fundamental principle of government—that it exists primarily to provide for the common good. . . . This court has repudiated the suggestion, whenever made, that the Constitution requires the benefits derived from the expenditure of public moneys to be apportioned to the burdens of the taxpayer, or that he can resist the payment of the tax because it is not expended for purposes which are peculiarly beneficial to him. [*Car-*

michael v. Southern Coal & Coke Co., 301 *U.S.* 495, 522-523 (1931)].

The complexity of attempting to determine the fairness of taxing schemes was further recognized in *San Antonio School District v. Rodriguez*, 411 *U.S.* 1 (1973), in which this Court considered challenges, on equal protection grounds, to Texas' statutory method for financing public education primarily from revenues collected from local real property taxes. In affirming this statutory financing scheme, this Court stated that,

> [W]e stand on familiar ground when we continue to acknowledge that the Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues. Yet, we are urged to direct the States either to alter drastically the present system or to throw out the property tax altogether in favor of some form of taxation. No scheme of taxation, whether the tax is imposed on property, income or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause. [*Id.*, 411 *U.S.* at 41].

Clearly, therefore, this Court has explicitly established the broad discretion state legislatures may exercise in formulating taxing statutes and has further cautioned the judiciary against undue interference with a state's fiscal policies.

Petitioners are asking for extraordinary relief in this matter and are requesting this Court to analyze the entire local property tax structure in the State of New Jersey.

Since this matter was heard in the context of a motion for summary judgment, no factual record exists in this case which supports any of the factual allegations raised by the petitioners. Moreover, the delicate balancing of concerns and interests whenever fiscal issues are debated clearly involves a legislative activity. The legislative nature of this issue is even more pronounced in this case since the petitioners are seeking an overhaul of the entire local property tax system in New Jersey.

It is thus evident that the constitutional challenge to the New Jersey local property tax scheme raised by the petitioners is both untimely and ignores the broad deference afforded to state legislatures in formulating tax systems. The petition for the writ of *certiorari* plainly does not raise a question of constitutional dimension which warrants the granting of such extraordinary relief. Therefore, the petition should be denied.

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CONCLUSION

For the aforementioned reasons, it is respectfully submitted that the petition for writ of *certiorari* should be denied.

Resepectfully submitted,

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